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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket No. 95-20
Bell Operating Company	)	
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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Table of Contents

SUMMARY[1]

For nearly thirteen years, the Commission has been attempting -- for very good reason -- to eliminate the efficiency-robbing device of structural separation for BOC provision of ISP services. On two separate occasions, BOC ISP competitors have succeeded in getting such Commission decisions reversed on appeal by singling out hyper-technical bases for legal challenges which did not really take on the underlying wisdom of those decisions. For the third time since 1985, the Commission once again proposes to eliminate this antiquated, clearly unnecessary regulatory restriction, and for the third time the Commission is plainly right in doing so.

While the Commission should allow integration of BOC intraLATA ISP services in accordance with appropriate non-structural safeguards, it should also allow a BOC to elect into the Section 272 interLATA ISP requirements for any intraLATA component of such a mixed, inter/intraLATA information service. This approach would optimize service providers' efficiencies and would yield concrete benefits for consumers.

The Section 251 unbundling requirements obviate the need for ONA, but should not/need not be extended ISPs. Congress would have legislated that extension if it had thought it prudent and consciously chose not to do so. Further, ISPs can and do take steps to avail themselves of Section 251 benefits in any event.

The CEI plan filing and approval process should now (again) be eliminated. Time has shown that it constitutes a totally unnecessary drain on industry and Commission

[1] Abbreviations used in this Summary are referenced within the text.

resources, and that it produces only delay in the introduction of beneficial new services to the public.

The time has long since passed for the Commission to eradicate innovation-stifling structural separation for BOC provision of ISP services, and to replace it with the proper set of non-structural safeguards. Only in this manner can the Commission ensure continued expansion of true information service competition, to the ultimate benefit of all American consumers.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), by its attorneys, and on behalf of its Bell Operating Company ("BOC") subsidiaries, Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, hereby submits these Comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM").[1] The FNPRM provides welcome signals that the Commission will institute several deregulatory initiatives in the information services market. SBC encourages the Commission to adopt and implement many of these initiatives, particularly those that would streamline (and in certain limited cases eliminate) the ONA regime, as well as those that would eliminate the current BOC obligation to file Comparably Efficient Interconnection ("CEI") plans. These initiatives are in the best interests of all consumers and providers of information services.

I. INTRODUCTION

In this proceeding, the Commission seeks to achieve three principal objectives: (1) enable consumers to take advantage of innovative enhanced/information services offered by the BOCs

[1]FCC 98-8, released January 30, 1998.

and other enhanced/information service providers ("ISPs"); (2) ensure the continued competitiveness of the information services market; and (3) establish safeguards for BOC provision of enhanced/information services that make common sense in light of current technological, market, and legal considerations.[2]

As explained more fully below, each of these objectives can be met by generally preserving a streamlined Open Network Architecture ("ONA") regime. However, a BOC's Section 272 affiliate should be able to provide on an intraLATA basis any information services that it may offer on an interLATA basis and, where it chooses to do so, two results should follow. First, the BOC should be permitted to "elect" into Section 272 regulation for purposes of both the intraLATA and interLATA services offered by the affiliate. Second, when the BOC makes such an election, it should be relieved of any ONA-related obligations. In all events, the Commission should eliminate the Comparably Efficient Interconnection ("CEI") plan regime. Taking each of these steps would be fully justified in light of dramatic competitive, marketplace and legal developments that have transpired over recent years.

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[2]FNPRM, ¶1.

II. COMPETITIVE AND OTHER MARKETPLACE DEVELOPMENTS SUPPORT MAINTAINING A STREAMLINED ONA REGIME.

The Commission's goal of furthering the widespread availability of innovative information services is best achieved by a fully competitive information services market. It is axiomatic that unfettered competition in any market ensures delivery of innovative services to "consumers and communities across the country"[3] at prices determined by the most efficient suppliers.

Given the present level of competition throughout the information services market, SBC joins in the Commission's tentative conclusion that it should not reimpose mandatory structural separation requirements on BOCs providing intraLATA information services.[4] SBC also agrees that the "sustained growth of competition within the information services market," characterized by the presence of "large information service competitors," has sufficiently diminished any possibility of BOC access discrimination, and that streamlining current ONA unbundling requirements would satisfy any concerns under *California III*.[5]

Over a decade ago, the Commission used terms such as "truly competitive" and "extremely competitive" to describe the information services market.[6] The FNPRM now

[3] *Id.*

[4] *Id.*, ¶ 59.

[5] *Id.*, ¶ 36; *California PUC v. FCC*, 39 F. 3d at 919 (9th Cir. 1994) ("*California III*"). In *California III*, the Court was concerned that the Commission had retreated from a "requirement" of "fundamental unbundling" without adequate justification. *Id.*, at 923, 930.

[6] *Id.*, & n. 109 (further citations omitted).

correctly observes that, since then, competition "has continued to increase markedly as new competitive ISPs have entered the market."[7] In fact, as SBC has repeatedly demonstrated over recent years,[8] and as the Commission's FNPRM squarely acknowledges, the information services market is "already robust."[9]

Others in the information services industry are even more emphatic. As AT&T noted almost two years ago:

> "This market is highly fragmented, and characterized by hundreds of entities that provide on-line services, Internet services, electronic commerce services, and other forms of store-and-forward messaging and communications services, serving both narrow and broad market segments. No single provider has a significant share of this vast and growing market, or could

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[7]FNPRM, ¶ 36.

[8]*See, e.g.*, *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20 ("Computer III Further Remand Proceedings"), Comments of Southwestern Bell Telephone Company, filed April 7, 1995 ("SWBT April 1995 Comments"), at 10-25; Reply Comments of Southwestern Bell Telephone Company, filed May 19, 1995, at 3-4; and, Ex Parte Letter of Southwestern Bell Telephone Company, filed June 21, 1996, at 2-4; *see also*, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Comments of Pacific Telesis Group, filed June 11, 1996, at 7-18. These materials have analyzed the gamut of various information service market sectors, encompassing on-line information services, financial transaction services, value-added networks, interactive voice response and audiotex, public voice mail, public e-mail, electronic data interchange, and enhanced fax services. Given that these materials have not been incorporated into the record within CC Docket No. 98-10, and that the last-cited material has not been incorporated into the record in CC Docket No. 95-20, SBC hereby incorporates them by reference within these Comments.

[9]FNPRM, ¶1. The Commission elsewhere noted the competitive nature of the information services market. *See, e.g.*, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905 (1996) ("Non-Accounting Safeguards Order"), at ¶136 (noting that "the market for information services is fully competitive").

> otherwise raise even an inference of 'market power.' Moreover, enhanced services in the United States have grown year over year at explosive rates, and are projected to continue to grow at dramatic rates over the next five years."[10]

AT&T's observations are particularly significant given recent developments in those services of greatest interest to consumers: Internet, voice messaging, and e-mail. The documented year-over-year growth of both users and providers of Internet access and related Internet services continue to defy forecasts. One recent estimate places the current number of Internet access providers at 3,825 in 1997,[11] serving an estimated 47 million subscribers in the United States.[12] Some commentators expect that consumer subscribership to various Internet access services will reach about 74 million by 2001.[13]

Considering numbers such as these, it is no wonder that Internet traffic tripled in 1995, tripled again in 1996, and then doubled in 1997.[14] Also unsurprising is that, since January 1995, the number of Internet access providers (in all domains) in the United States has nearly doubled

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[10]Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Comments of AT&T Corp., filed April 25, 1996, at p. 29.

[11]Forrester Research, Inc., "Market Consolidation But No Carrier Domination," *The Forrester Report*, Vol 1, no. 12 (May 1997), p. 11.

[12]Kevin Werbach, "Digital Tornado: The Internet and Telecommunications Policy," Federal Communications Commission, Office of Plans and Policy, Working Paper 29, p. 21, *citing* "Us on-line population reaches 47 million - Intelliquest survey results," *Internet IT Informer* (February 19, 1997).

[13]Hilary Mine, "Core Internet Subscription Service: Internet Infrastructure Markets," Allan Tumolillo, ed. (Probe Research, Inc., 1997), p. 12.

[14]*Id.*, p. 3. "In 1995 and 1996, traffic for many providers was doubling every other month or so." *Id.*, p. 15.

each year.[15] Obviously, the growth and currently widespread availability of information services provided via the Internet has not been adversely affected in any sense whatsoever -- whether by the current degree of unbundling imposed on BOCs by ONA requirements, or by the BOCs' provision (subject to nonstructural safeguards) of intraLATA information services on an integrated basis.

BOC participation in the Internet services market clearly cannot be characterized as dominant; to the contrary, it is minuscule. Five of the largest Internet access providers (America Online Inc, CompuServe Corp., The Microsoft Network, Prodigy Inc., and AT&T WorldNet), having a combined subscribership of 17.4 million as of October 1997,[16] account for 37% of the market. The top five national telecommunications carriers (AT&T, GTE/BBN, MCI, Sprint, and WorldCom/UUNET) captured 39% of the total 1997 Internet access revenue of $1.6 billion generated in the business segment of the market. In stark contrast, the revenue of all BOCs combined accounted for only 1% in the same market segment.[17] Overall, the top 10 Internet access providers account for about 75% of the corporate market and 95% of the consumer market.[18]

In addition, Internet service delivered by cable TV further alleviates any concern about potential BOC dominance. Recent development of a high speed modem capable of sending and

[15] Mine, p. 17.

[16] "Hyperspace," *Inter@ctive Week*, vol. 5, no. 1 (January 12, 1998), p. 50.

[17] Forrester, p. 11.

[18] The Yankee Group, "Internet Predictions 1998," *Internet Market Strategies*, vol. 4, no. 1 (January 1998), p. 2.

receiving information at 10 million bits per second (compared to the 56,000 bits per second available with the fastest traditional telephone modem) has positioned the cable TV industry to become a major source for residential Internet access.[19] During the last quarter of 1997 the number of cable modem subscribers nearly doubled (from 55,000 to 107,000) and subscribership is expected to exceed 3 million households by 2002.[20] With the ability to provide Internet access at speeds over 175 times faster than is available using telephone network-based Internet access, cable TV distribution networks are clearly a viable alternative to BOC network facilities for connecting Internet service providers and residence consumers.

Furthermore, as pointed out by Southwestern Bell Telephone Company in its comments in response to the Commission's NPRM in this proceeding, telecommunications firms providing value-added network (VAN) services transport a significant portion of U.S. consumer online traffic.[21] The largest VAN services providers in the U.S. in 1994 included AT&T, MCI, Sprint, and other non-BOC telecommunications carriers.[22]

When the timeliness of information is not crucial (e.g., reference material), CDs are a viable alternative delivery medium to accessing online information services via BOC or other providers' networks. The attractiveness of CDs is being further enhanced by new technologies which permit consumers to write to blank CDs, and erase existing information on a CD and

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[19]Tim Jones, "Cable Firms Are Speeding Up the Net," *St. Louis Post-Dispatch* (February 25, 1998), p. C7.

[20]*Id.*

[21]SWBT Comments, April 1995, p. 14.

[22]*Id.*, p. 20.

rewrite new information to it using PC hardware generally available for less than $200 and software priced below $100.[23]

The voice messaging segment of the information services market also reflects vigorous competition obviously unharmed by BOC participation in that business. Numerous alternatives to BOC voice messaging services are provided by other telecommunications firms, service bureaus, and equipment manufacturers. Basic voice mail and augmented voice messaging services are readily available from large IXCs (e.g., AT&T's True Connections Voice Mail and True Messages Service, MCI's networkMCI Voice Mail and Standard Mailbox Service, and Sprint's MessageLine Voice Mail Service). In addition, the large IXCs also offer interactive voice response services (to facilitate business transactions automatically), audiotex (providing business, news, sports, weather, and other information to customers), and various other enhanced voice processing services (e.g., flexible storage and retrieval features). Voice processing services, particularly voice mail, are routinely offered by wireless telecommunications companies (in addition to the wireless affiliates of IXCs and LECs, other cellular service providers such as AirTouch Communications and 360º Communications Company)[24] and competitive local exchange service providers (e.g., MFS Intelenet, Teleport, Time Warner

[23]Jim Thompson, "Burn, Baby, Burn -- Adaptec's Newest Software Makes Burning CDS Easy," *Boardwatch Magazine*, "Fable of Contents," vol. XI, issue 2 (February 1998) (www.boardwatch.com/mag/98/feb/fable.html).

[24]The wireless communications industry's increasing awareness of voice messaging and other enhanced services is discussed in Kevin Duffey, "Evaluating Value-Added Services," *Wireless Business & Technology*, vol. 4, no. 1 (January 1998), pp. 36-38.

Communications, and Jones Intercable).[25]

This market also includes specialized voice processing companies offering numerous voice messaging services and software processing systems (e.g., Octel Communications Corporation and Voice-Tel Enterprises). A wide variety of national, regional, and local answering service bureaus offering both automated and live answering services successfully compete in the voice processing services market.

In addition, terminal equipment serves as a viable alternative to BOC voice processing services. A plethora of answering machines are available in the consumer segment of this market, and businesses can take advantage of PBX systems with integrated voice mail capabilities and digital answering machines.[26] With such a wide variety of alternative service providers, it is simply not possible to argue credibly that BOC participation in voice messaging and processing -- or that the level of unbundling reflected in the common ONA model, without more -- has done anything other than stimulate further this highly competitive market.

A further example of competition in the information services market is the e-mail sector. Recently, Tele-Communications Inc. selected At Home Corp. "to provide electronic mail

[25]Jones Intercable offers a number of call management packages, primarily to residents of multidwelling units, in Alexandria, Virginia. Beyond dial tone and video, these packages include various CLASS, custom calling, and voice mail services. Rona Shuchat, "1997 Market Assessment and Forecast: Consumer Voice Messaging and Call Management Services," IDC/LINK Report #13182 (March 1997), pp. 52-53.

[26]The viability of "intelligent CPE" displacing network value-added services is illustrated by Federal Express' investment in ZapMail, a fax service priced at $35 for up to ten pages. Soon after Federal Express offered ZapMail nationally in 1984, the price of fax machines dropped to a few hundred dollars and virtually every business bought one. After losing $190 million in one year, Federal Express withdrew the service. Michael Weingarten and Bart Stuck, "No

services to users of up to 11 million new cable television set top boxes."[27] At Home will assist advertisers and on-line service providers in developing software for the new set top boxes. Directly competing with network conference services offered by telecommunications carriers (primarily LECs and IXCs), Microsoft is providing its NetMeeting and NetShow software for free.[28]

In 1990, the Ninth Circuit Court of Appeals in *California I* observed that "the emergence of powerful competitors such as IBM, which have the resources and expertise to monitor the quality of access to the network, reduces the BOCs' ability to discriminate in providing access to their competitors."[29] Eight years later, several large, well-financed firms and numerous other competitors are actively present and firmly entrenched in the information services market. This marketplace reality precludes any possibility, as both a practical and legal matter, of access discrimination by the BOCs in favor of their own (or affiliated) information service operations.

Indeed, the Commission's FNPRM recognizes that BOCs are unlikely to discriminate successfully against information service competitors by forcing them to accept reduced quality and/or overpriced access to local exchange networks, noting that "[t]he presence of well-established participants in the information services market, such as EDS, MCI, AT&T, Viacom, Times-Mirror, General Electric, and IBM, may make it more difficult for BOCs to engage in

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Substitutions?" *Telephony*, vol. 233, no. 5 (February 2, 1998), p. 26.

[27]"TCI Selects At Home Corp. For Services," *Wall Street Journal* (February 24, 1998), p. B8.

[28]Weingarten and Stuck, p. 26.

[29]*California v. FCC*, 905 F. 2d 1217, 1233 (9th Cir. 1990) ("*California I*").

access discrimination."[30] In SBC's view, the Commission's observation is vastly understated. It is virtually impossible for any of these successful, communications-savvy, multinational corporations to be the unwitting and helpless victims of BOC access discrimination.

In sum, given the presence of a robustly competitive market, and a significant number of well-heeled competitors in that market, any potential threat of BOC access discrimination has been substantially diminished, if not entirely eliminated. Thus, the Commission need not reimpose structural separation upon BOCs' enhanced services operations, notwithstanding the *California III* Court's concern about whether the level of unbundling mandated by ONA is sufficient, because the Court did not take into account these specific considerations (and, indeed, could not have done so at the time).

III. ENACTMENT AND IMPLEMENTATION OF THE 1996 ACT ENSURES THE CONTINUATION OF A ROBUSTLY COMPETITIVE INFORMATION SERVICES MARKET.

Beyond the marketplace and technological sophistication of a great many information service providers, requirements stemming from the 1996 Act and the Commission's *Local Competition Order*[31] make any possibility of BOC network access discrimination highly implausible, if not impossible as a practical matter. These developments -- including increasing local exchange competition as a result of facilities-based entry, the availability of BOC unbundled network elements, and the resale of BOC local exchange services -- make clear that

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[30]FNPRM, ¶ 36.

[31]Telecommunications Act of 1996 and "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996," *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

BOC attempts to discriminate against information service competitors by providing inferior access to local exchange networks would only accelerate BOC competitive losses in the local exchange market.

Section 251 of the 1996 Act requires incumbent LECs, including the BOCs, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at just, reasonable and nondiscriminatory rates, terms and conditions, and to offer telecommunications services for resale.[32] The BOCs have every incentive to meet these obligations, particularly because Section 271 provides that a BOC may enter the interLATA market in a particular state by demonstrating, among other things, that it has entered into access and interconnection agreements with competing telephone exchange service providers that satisfy the competitive checklist of Section 271(c)(2)(B).[33]

The Commission is correct in its view that the unbundling requirements imposed by Section 251 and its implementing regulations under the *Local Competition Order* are essentially equivalent to the "fundamental unbundling" previously requested by several parties but rejected by the Commission. It is also correct in observing that the type and level of unbundling under Section 251 is more extensive than that required under ONA in the *BOC ONA Order*.[34] While only "requesting telecommunications carriers" are entitled to negotiate interconnection

[32]47 U.S.C. §§251(c)(2)-(4).

[33]FNPRM, ¶30.

[34]*Id*, ¶31.

agreements and obtain access to unbundled network elements,[35] implementation of Section 251 will bring about further competition in the local exchange market that will directly benefit ISPs.

First, telecommunications carriers that have obtained interconnection or access to unbundled network elements may offer information services through these arrangements so long as they are also offering telecommunications services through the same arrangement.[36] Second, carriers with direct rights under Section 251 will compete with BOCs to provide the basic network services that pure ISPs may need to offer their own information services.[37] Third, pure ISPs can enter into partnering or teaming arrangements with carriers having Section 251 rights.[38] Finally, ISPs can obtain certification as telecommunications providers and claim the interconnection and access to unbundled network element rights afforded under the law to any other telecommunications providers.[39]

The extent to which local exchange competitors have already taken advantage of Section 251 opportunities is remarkable. SBC's BOCs have signed at least 265 interconnection and resale agreements with CLECs, 211 of which have been approved by various state commissions (Texas, 87; California, 27: Kansas, 24; Arkansas, 20: Oklahoma, 18; Missouri, 22; and, Nevada, 13). Currently, SBC's BOCs are negotiating more than 370 additional interconnection and resale

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[35]47 U.S.C. §§251(c)(2), (c)(3).

[36]FNPRM, ¶33, n. 98, *citing*, *Local Interconnection Order*, 11 FCC Rcd at 15990, at ¶995.

[37]FNPRM, ¶33.

[38]*Id.*

[39]*Id.*

agreements. More than 160 CLECs were operational as of the end of 1997 in SBC's in-region territory, placing resale, interconnection and unbundled network element orders with SBC's BOCs at a substantial pace.

In addition, many local service providers, as well as cable companies, have long been providing facilities-based alternatives to BOC local exchange networks in metropolitan areas, where the most lucrative telecommunications and information service accounts are situated.[40] "By now many big businesses and government and educational institutions, as well as companies located in big and midsized downtown and major suburban centers, have the benefit of playing competitors off against each other."[41]

Firms constructing broadband fiber data networks represent an additional competitive alternative to incumbent LECs as these networks begin reaching beyond their data applications to provide more traditional telecommunications services.[42] Wireless technology (e.g., the development and deployment of PCS, particularly by large IXCs such as Sprint and AT&T) is

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[40]For example, seven firms providing local telephone service are operating in the New York City metropolitan area, and six firms are competing in the local exchange market in the Chicago metropolitan area. "Phone Competition: U.S. First, Then Europe," *Inter@ctive Week*, vol 5, no. 4 (February 2, 1998), p. 44.

[41]*Id.* Competitive local exchange service providers also are becoming more aggressive in their attempts to wrest market share from incumbent LECs. For example, Time Warner Communications offers potential subscribers in Rochester, New York free cable TV, local telephone service, unlimited enhanced features, and voice mail for a trial period such as 60 days; 95% of customers taking advantage of these free services convert to paying subscribers when the free trial period ends. The Yankee Group, "Network-Based Services Enter the Spotlight" (August 1996), p. 33.

[42]"Phone Competition: U.S. First, Then Europe," p. 45.

becoming yet another alternative to incumbent LEC local telephone service.[43] With mobile telephone users being four times more likely to be Internet users than consumers without mobile phones, the demand for wireless Internet access is growing and communications companies are beginning to meet that demand.[44]

These examples demonstrate that the 1996 Act has created a multitude of viable alternatives to BOC networks for carriers that provide information services, and for pure ISPs indirectly. The Commission should therefore adopt its tentative conclusion that "the de-regulatory, pro-competitive provisions of the 1996 Act . . . are consistent with, and provide additional support for, the continued application of the Commission's current nonstructural safeguards regime for BOC provision of intraLATA information services."[45]

Inasmuch as the network service alternatives created by the Act postdated *California III*, they could not have been taken into account at that time by the Court. Furthermore, the Commission should find that, together with the already robustly competitive nature of the information services market, these network service alternatives fully address any concern that the level of unbundling under ONA might not provide sufficient protection against access discrimination. Any incentive or ability BOCs might have had to discriminate against information service providers -- to the extent it existed at all when *California III* was decided --

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[43]John Sullivan, "Wireless Local Loop," *Wireless Business & Technology*, vol. 4, no. 1 (January 1998), pp. 26-28.

[44]Kevin Duffey, "The Internet Goes Mobile," Telephony, vol. 234, no. 4 (January 26, 1998), pp. 78, 80; and Steve Stroh, "Life With Ricochet, Pointcast," Boardwatch Magazine, "Fable of Contents," vol. XI, issue 2 (Feb. 1998) (www.boardwatch.com/mag/98/feb/fable.html).

[45]FNPRM at ¶ 51.

has been eliminated.

IV. THE COSTS OF STRUCTURAL SEPARATION ARE SUBSTANTIAL AND WOULD PROVIDE NO COUNTERVAILING BENEFITS EITHER TO PROVIDERS OR CONSUMERS OF INFORMATION SERVICES.

In tentatively concluding that BOCs should be able to continue providing intraLATA information services on an integrated basis,[46] the Commission recognizes the higher costs of production associated with a decision to mandate structural separation. These costs are significant -- if not fatal in the current competitive environment -- to the introduction of new and innovative information services. No offsetting consumer or competitive benefits would be realized by reimposing structural separation now.

Even apart from the equipment relocation costs, redundant personnel expenses, and potential service disruptions cited by the Commission,[47] structural separation would also require

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[46] *Id.*, ¶ 59.

[47] *Id.*, ¶ 57 & n.164. In other recent contexts, similar factors have persuaded the Commission that structural separation is neither required nor appropriate. For example, in granting several BOCs' petitions for forbearance from the separate affiliate requirements of Section 272 of the Act for their E911 services, the Commission noted that providing such services on an integrated basis "saves time and money and enhances the reliability of those services," and that applying separate affiliate requirements "would prevent them from continuing to realize the economies and efficiencies that the Bureau and the MFJ Court waivers permitted." Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220, released February 6, 1998, at ¶51. Similarly, in granting BellSouth's application for forbearance from the same requirements in connection with its reverse directory services, the Commission noted that BellSouth "achieves significant economies in using the same facilities and personnel to offer reverse directory services as it uses for its standard directory assistance operation," and that provision of these services through a separate affiliate "would significantly increase BellSouth's costs of providing [the] services. . . and the consequent charges to consumers." *Id.*, at ¶73. These orders provide ample support for the proposition that the burdens of structural separation are real and should be avoided in the

investment in duplicate facilities and increased administrative and overhead costs. Further, structural separation would create additional transaction costs arising from the decision to replace an integrated process that delivers retail consumer services with a corporate structure requiring that the production and sale of intermediate (or "input") goods and services be subsequently altered or transformed before delivery to the retail market.

By effectively raising BOCs' cost structures, mandated structural separation would exert unacceptable pressures on the BOCs to increase the retail prices of their information services. Consumers would be denied the opportunity to take advantage of the lower prices reflecting cost efficiencies arising from the economies of scope BOCs could realize from jointly providing basic and enhanced services.[48]

Structural separation would also needlessly distort BOC investment decisions involving the deployment of technological innovations and facilities required for the delivery of new enhanced services. BOCs effectively would be forced to ignore the more favorable deployment considerations of providing an entire array of telecommunications and information services on an integrated basis, due solely to artificial distinctions isolating technologies and facilities associated with the provision of information services from BOCs' primary production processes.

Ultimately, these artificially-induced cost and investment considerations would delay, if not eliminate altogether, introduction of new information services by BOCs. Any services that might be introduced would be subjected to pricing pressures exerted against no other providers, a

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absence of a highly compelling contrary public interest.

[48]Economies of scope exist when the cost of jointly producing several services is lower

formula for failure in this robustly competitive market.

By worsening BOCs' competitive positions in enhanced and information services markets -- while yielding no significant benefits to consumers by either lowering prices or increasing the array of available services -- structural separation can be interpreted as a policy designed to protect competitors rather than competition. Competition among information service providers involves rivalries among many multi-product firms, each of which exploit integrated production processes yielding economies of scope.[49] These economies of scope increase significantly as telecommunications, computer, cable TV, data/information, video, and other technology-oriented industries continue to converge. The cost efficiencies generated by their joint production can drive consumer prices down while providing opportunities and incentives for suppliers to continue developing and marketing new services. To preclude but a small group of firms from capturing all available cost efficiencies (e.g., mandating structural separation for BOC information services) would inhibit, rather than encourage, competition.

These effects are not merely theoretical. Evidence of actual marketplace behavior provides an indisputable indicator of the inefficiencies inherent in structural separation. To SBC's knowledge, no supplier has voluntarily chosen corporation "separateness," bereft of any advantages of integration, as the vehicle by which to deliver profitably information services to consumers on a most-efficient, least-cost basis. For example, IXCs jointly produce and market

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than the combined costs of producing each of the services separately.

[49]This point is presented in more detail in Jerry A. Hausman and Timothy J. Tardiff, "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services" (April 6, 1995), Exhibit A to *Comments of Southwestern Bell Telephone Company*, CC

telephony, cellular, PCS, voice mail, Internet access, and other enhanced and information services. Similarly, cable TV firms are jointly providing video, communications, and information services. A policy preventing BOCs from choosing production processes that yield the same economies of scope enjoyed by these other firms would reduce potential consumer benefits without justification.[50]

Perhaps no better example of the dampening effects of structural separation on product and service innovation exists than in the residential voice messaging service market segment.[51] Despite both the BOCs' technological ability to provide voice messaging services and the residence market demand for these services in the early 1980s, BOCs did not fully bring these services to market until nearly a decade later when restrictions against integrating voice messaging and basic service operations were sufficiently relaxed. Following BOC introduction of these services, prices fell dramatically and their purchase by residence customers grew rapidly.[52] In short, until the relaxation of structural separation requirements, the costs of providing this worthwhile service on a structurally separate basis exceeded the potential benefits from serving this market segment, and inhibited its introduction and growth.

No doubt some will argue that since BOCs are required to establish structurally separate corporate entities to provide interLATA information services, the incremental costs of imposing

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Docket 95-20 (filed April 7, 1995), pp. 4-5.

[50]Such welfare losses could be substantial, perhaps in the range of $50 - $100 million per year (as estimated by Hausman and Tardiff, p. 20).

[51]SWBT Comments, April 1995, at pp. 30-31, and Exhibit A thereto, at pp. 12-15.

[52]Hausman and Tardiff, p. 9.

structural separation requirements on intraLATA information services will be negligible and the benefits in terms of regulatory oversight and enforcement will be substantial. However, the provisions of Section 272(a)(2)(C) of the Act apply only to interLATA information services, reflecting Congress' intent not to impose structural separation requirements on intraLATA information services. Moreover, Congress' silence in this regard may be likened to the lack of separate affiliate requirements in Section 653, pertaining to video service. The Commission regarded this omission as important, and declined to impose a separate affiliate requirement on the provision of video services.[53] No different result should obtain with respect to intraLATA information services.

SBC agrees with the Commission's view that continuing nonstructural safeguards will better serve the public interest than a decision to reimpose structural separation, notwithstanding the affiliate requirements of sections 272 and 274 of the Act.[54] More importantly, as shown herein, all credible evidence from the marketplace underscores the correctness of this view.[55]

The BOCs' provision of intraLATA information services on an integrated basis has not adversely affected competition one iota. Prices for information services have not generally risen, nor has the quantity or quality of services diminished. Rather, prices have fallen, and quantity

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[53]Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems, CS Docket No. 96-46, FCC 96-249, *Second Report and Order*, released June 3, 1996, at ¶249.

[54]FNPRM, ¶ 59.

[55]*See also*, Computer III Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, ex parte presentation of Southwestern Bell Telephone Company, filed June 21, 1996, at pp.8-9.

and quality has improved. In the face of these facts, the significant costs and other disadvantages of structural separation are not justified by any consumer or competitive benefits. These considerations support structural integration, not structural separation.

V. ATSI'S PETITION FOR RECONSIDERATION SHOULD BE DENIED IN ITS ENTIRETY.

Consumers want "one-stop" shopping for all of their telecommunications-related needs. Notwithstanding the regulatory distinction between telecommunications and information services, that distinction is not appreciated in the marketplace. The petition for reconsideration of the Association of Telemessaging Services International, Inc. ("ATSI"), which seeks to bar the joint marketing so necessary to one-stop shopping, should be dismissed out of hand. Such relief is neither necessary nor desirable, whether viewed from a consumer standpoint or a competitive standpoint.

Structural separation of the marketing functions necessary to sell information services, similar to structural separation of the production of these services, is inefficient and will raise the costs, and hence prices, of BOC information services. Establishing structurally separate marketing forces would entail additional costs for redundant sales, customer relations, supervision, advertising, human resources, general administrative and other functions. Capital assets would also require unnecessary duplication (e.g., building space, personal computers, office equipment, etc.). In addition, transaction costs would increase; for example, requests for service would be processed twice, once by the marketing company when a sale was finalized, and again when BOC personnel were notified to initiate service. Further inefficiencies would be